



INTELLECTUAL PROPERTY  
402-391-4448

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2FW

December 4, 2006

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Commissioner for Patents  
Box: 1450  
Alexandria, VA 22313-1450

RE: APPLICATION OF JOHS ET AL. TITLED "ELLIPSOMETRIC  
INVESTIGATION OF THIN FILMS;  
SERIAL NO: 10/765,732;  
FILE DATE: 01/27/04;  
ART UNIT: 2877;  
EXAMINER: DETSCHEL, M.

RESPONSE TO OFFICE ACTION AFTER FINAL

Dear Sir;

I am in receipt of an Action dated 11/29/06 regarding the identified Application.

Please find accompanying herewith a set of Claims with some thereof being Currently Amended. The Examiner has cited Section 101 under its new interpretation. I'm sure I'm not the only one having problems with this new 101 requirement. When the Claims were drafted in 2004, they would have met the 101 requirement as it was interpreted for decades of which I am personally aware. The change is troublesome, especially in that it is being applied retro-actively. And again, I know I am not the only one having trouble with the new interpretation.

Now, in this case it is believed that the problems can be overcome by re-casting the Independent Claims to recite "A Method of Fabricating..." as opposed to a method of tracking fabrication, with the Claims being also Amended to recite a resulting concrete and tangible system, (which practicing the Method produces), as it did under its original presentation. Practicing a "Method of fabricating..." results in a useful,

concrete and tangible result which is what the new 101 interpretation requires. As Amended herein practice of the Claim recital provides a concrete tangible end result.

It is hoped we can avoid having to go through a RCE procedure by working with this Response. In that light, the Examiner is respectfully requested to phone Attorney Welch should problems remain, but which can be worked out. I am always receptive to good suggestions!

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS TRANSMITTAL IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE WITH SUFFICIENT POSTAGE FOR FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO THE COMMISSIONER FOR PATENTS, BOX: 1450, ALEXANDRIA VA. 22313-1450 ON THE DATE INDICATED BELOW.

  
JAMES D. WELCH

12/04/06  
DATE